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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

PETER THOMAS RODRIGUEZ,

Defendant and Appellant.

B231195

(Los Angeles County
Super. Ct. Nos. MA050779 &
GA073371)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Kathleen Blanchard, Judge. Appeal dismissed.

Gary V. Crooks, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Represented by appointed counsel, Peter Thomas Rodriguez decided to enter an open plea to the trial court on October 31, 2008 in case No. GA073371,¹ and pleaded no contest to possession of a firearm by a felon and admitted having one prior felony conviction. The court suspended imposition of sentence and placed Rodriguez on three years of formal probation on condition he serve 30 days in county jail, with credit for days served.

On November 10, 2010, Rodriguez was charged by information in case No. MA050779 with one count of possession of a firearm by a felon and one count of possession of a controlled substance (Ecstasy). The information specially alleged as to both counts that Rodriguez had served three separate prison terms for felonies (Pen. Code, § 667.5, subd. (b)).

On January 5, 2011, Rodriguez made a motion pursuant to *People v. Marsden* (1970) 2 Cal.3d 118 requesting appointment of new counsel on grounds his current counsel had not provided him with discovery or filed a motion to suppress evidence. After hearing from defense counsel, the court denied the motion.

On January 11, 2011, Rodriguez entered a negotiated plea of no contest to possession of a firearm by a felon and admitted having one prior felony conviction. Prior to entering his plea, Rodriguez was advised of his constitutional rights and the nature and consequences of plea and admissions, which Rodriguez stated he understood. Defense counsel joined in the waivers of constitutional rights. The trial court found a factual basis for the plea based upon the police report and expressly found Rodriguez's waivers, plea and admission were voluntary, knowing and intelligent. In accordance with the plea agreement, the court sentenced Rodriguez to the middle term of two years in state prison for possession of a firearm by a felon in case No. MA050779. The court found Rodriguez in violation of his probation in case No. GA073371, revoked and terminated probation and imposed the middle term of two years to be served concurrently to the sentence imposed in case No. MA050779. The court awarded Rodriguez presentence

¹ Case numbers refer to Los Angeles Superior Court cases.

custody credit of 105 days (84 actual days and 21 days of conduct credit) in each case. The court ordered Rodriguez to pay a \$40 court security assessment, a \$30 criminal conviction assessment and a \$400 restitution fine, and imposed and stayed a parole revocation fine pursuant to Penal Code section 1202.45 in each case. The court dismissed the prior prison term allegation on the prosecution's motion.

Rodriguez filed a timely notice of appeal and a request for a certificate of probable cause. In his request for a certificate of probable cause, Rodriguez checked the preprinted boxes indicating he was challenging "the denial of a motion to suppress evidence" as well as "the validity of the plea or admission." The court denied the request for a certificate of probable cause. We appointed counsel to represent Rodriguez on appeal.

After examination of the record counsel filed an opening brief in which no issues were raised. On December 14, 2011, we advised Rodriguez he had 30 days within which to personally submit any contentions or issues he wished us to consider. We have received no response to date. We have examined the entire record and are satisfied Rodriguez's attorney has fully complied with the responsibilities of counsel and no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

A criminal defendant who appeals following a plea of no contest or guilty without a certificate of probable cause can only challenge the denial of a motion to suppress evidence or raise grounds arising after the entry of the plea that do not affect the plea's validity. (Cal. Rules of Court, rule 8.304(b)(1).) Because no suppression motion was filed in this case, and Rodriguez is, in essence, attacking the validity of his plea without a certificate of probable cause, his notice of appeal is inoperative. The appeal must be dismissed. (§ 1237.5; see *People v. Shelton* (2006) 37 Cal.4th 759, 769-771; *People v. Panizzon* (1996) 13 Cal.4th 68, 79.)

The appeal is dismissed.

ZELON, J.

We concur:

PERLUSS, P. J.

JACKSON, J.